

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AUSTIN EDWARD LIGHTFEATHER,

Plaintiff,

vs.

ABBY OSBORN, et al.,

Defendants.

4:20CV3118

MEMORANDUM AND ORDER

This matter is before the court on its own motion. Plaintiff filed a Notice of Appeal (filing 73) on March 1, 2021, and the Clerk of the Court entered a memorandum requesting a ruling as to Plaintiff's authorization to proceed in forma pauperis on appeal (filing 74). On March 16, 2021, the court directed Plaintiff to submit the \$505.00 fees to the clerk's office or submit a request to proceed in forma pauperis within 30 days. (Filing 75.) Upon further consideration, however, the court finds that pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff may not take this appeal in forma pauperis.

A litigant seeking to appeal a judgment must either pay the required filing fees, *see* Fed. R. App. P. 3(e), or proceed in forma pauperis pursuant to § 1915(a). Section 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962); *Ellis v. United States*, 356 U.S. 674, 674 (1958).

An appeal is frivolous when none of the legal points are arguable on their merit. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Misischia v. St. John's Mercy Health Sys.*, 457 F.3d 800, 806 (8th Cir. 2006). And while such a finding should be made only in extreme cases, it is proper when a party attempts to appeal

from an order that is clearly not appealable. *See Cohen v. Curtis Publ'g Co.*, 333 F.2d 974, 978 79 (8th Cir. 1964).

The order from which Plaintiff is attempting to appeal—the court’s order on initial review (filing 43) dated January 12, 2021—is clearly not appealable.¹ The order does not qualify as a “final decision[]” capable of appeal under 28 U.S.C. § 1291. In addition, the order does not fall within the narrow class of appealable interlocutory orders under § 1292(a).

Because Plaintiff is attempting to appeal from an order that is not appealable, the court certifies that the appeal is not taken in good faith.

IT IS THEREFORE ORDERED that:

1. Plaintiff may not proceed on appeal in forma pauperis.
2. The court’s Memorandum and Order dated March 16, 2021 (filing 75) is vacated.

Dated this 18th day of March, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge

¹ The court notes that other issues and concerns raised by Plaintiff in his Notice of Appeal were addressed by the court in its Memorandum and Order dated March 8, 2021, in which the court reviewed Plaintiff’s Amended Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. (Filing 68.)